

## **REMARKS**

This Amendment is responsive to the Office Action mailed July 8, 2008. The claim amendment made herein addresses a minor housekeeping issue; namely, the correction of the dependency of claim 58.

In the Office Action, claims 1 and 47 were rejected under 35 U.S.C. §112(1), alleging that Applicant was not in full possession of the claimed embodiment at the time the application was filed. Reconsideration and withdrawal of these rejections is respectfully requested.

The Office contends that the recitation “exposing only the selected ones of the plurality of compensation plans to the potential affiliate” implies that the potential affiliate is not exposed to the un-selected plans, which is (allegedly) not supported by the specification. The Office goes on to caution Applicant regarding negative limitations and the need for an explicit basis for such in the specification.

At the outset, it is not believed that “exposing only selected ones” constitutes a negative limitation. If it were, any time any selecting step was carried out in any patent application, the Office could argue that, impliedly, something else was not selected, which would then require explicit basis in the specification. That is not the case, nor has it ever been. The Office is not at liberty to reject a claim based upon a step that is not recited in any step, but only somehow “implied” by some other positively recited step. Taken to its extreme, if the Office’s rejection were to stand, each time an applicant recited any specific step, an implication could be made that some “other” step is NOT carried out, thereby triggering the Office’s new requirement that such step NOT carried out should have been explicitly present in the specification. This is not workable.

In the present case, the claims recite “exposing only the selected ones of the plurality of compensation plans to the potential affiliate,” which is not a negative limitation, but a narrowing and unambiguous limitation which the Office encourages, in the undersigned’s experience. Moreover, it is believed that this recitation does, in fact, find both antecedent and enabling support in the originally-filed specification.

Indeed, at the bottom of page 10, the originally-filed specification reads:

**Of these defined compensation plans, the merchant may choose to cause one or more (or all) of these to be exposed (i.e., visible) to the affiliate as available choices of compensation plans, as outlined at S12. Indeed, although the merchant may have defined many compensation plans, only a predetermined subset of these may be appropriate for any given affiliate or potential affiliate, based upon the affiliate's profile and/or other considerations.**

Note the language ... **“only a predetermined subset of these may be appropriate for any given affiliate.”** Naturally, only the predetermined subset of the compensation plans will be **“exposed (i.e., visible) to the affiliate”** as **“available choices.”** This passage clearly shows that the disputed claim recitation finds both antecedent and enabling support in the specification. Indeed, this passage states that:

- a) The merchant chooses which of the plurality of compensation plans are to be exposed;
- b) Only the chosen compensation plans (those compensation plans that are deemed to be appropriate to the affiliate) will be exposed to the merchant, and
- c) The only available choices available to the affiliate are those compensation plans that are made visible to the affiliate and the only compensation plans that are made visible to the affiliate are those that the merchant has chosen as appropriate.

Therefore, it is believed that the specification provides ample support for the recitation:

**exposing only the selected ones of the plurality of compensation plans to the potential affiliate, the exposed compensation plans being tailored to at least one of the potential affiliate and a product or service offered by the merchant, as determined based upon the defined profile and the evaluation of the sales and marketing information in the received application;**

In addition, page 14, lines 17-20 of the specification also states

**After logging in, registering or after having been accepted as an affiliate, step S22 calls for the affiliate to access a page on the merchant's site on which the compensation plans available to the affiliate are shown. The affiliate may then review each of these plans and, according to step S23, select one or more of the available compensation plans.**

Again, the “available” compensation plans are those that are exposed to the affiliate and the exposed compensation plans are only those compensation plans that the merchant has chosen as appropriate for the affiliate or potential affiliate.

Moreover, page 16, lines 13-18 of the specification further states:

**A compensation plan engine 346 may access the compensation plan database 344 and the affiliate information database 342 to select which of the plurality of compensation plans stored in the database 344 should be exposed (i.e., made visible) to the affiliate. Advantageously, the compensation plan(s) 352 that are exposed to the affiliate on the merchant's Web site 350 may be tailored to the affiliate and/or a product or service offered by the merchant.**

This passage also clearly states that the affiliate may only select (only) from those “compensation plan(s) 352 that are exposed to the affiliate on the merchant’s Web site 350.”

From the foregoing, it is believed clear that the specification, as filed, amply evidences that the applicant was in full possession of the presently claimed embodiment. Reconsideration and withdrawal of the 35 U.S.C. §112(1) rejections is, therefore, respectfully requested.

Claims 1, 5-9, 11, 12, 15, 26, 27, 29, 33-37, 39, 40, 47, 51-55, 57, 58, 61, 72, 73 and 75-77 were rejected as being anticipated by Bezos. Reconsideration and withdrawal of these rejections is respectfully requested.

In the Office Action, the Examiner calls “the catalog of products that can be marketed by an affiliate” a “plurality of compensation plans” (See paragraph 3). It is respectfully submitted that this is, on its face, factually incorrect. The “different products that can be marketed by an affiliate” or a catalog thereof are not compensation plans. The “different products” and the “catalog of different products” are just that, different products and a catalog of such products. A listing of products does not define a compensation plan.

When the Bezos patent talks about paying the associate (as affiliates are known in this reference), the same word is used: compensate, compensation. The Office is not at liberty to re-define terms contrary to their common and well understood meaning, especially as the applied reference uses those same terms in the same common and well understood manner.

Bezos uses the term “compensation” 19 times, and never is there any teaching or suggestion of more than one compensation plan, or any teaching of:

**selecting which of the plurality of different compensation plans to expose to the potential affiliate based upon the defined profile of the potential affiliate, the selected ones of the plurality of compensation plans being fewer in number than the defined plurality of different compensation plans; exposing only the selected ones of the plurality of compensation plans to the potential affiliate, the exposed compensation plans being tailored to at least one of the potential affiliate and a product or service offered by the merchant, as determined based upon the defined profile and the evaluation of the sales and marketing information in the received application;**

as claimed herein. Indeed, the 19 occurrences of the term “compensation” in Bezos are:

**providing an associate enrollment system which allows users to electronically apply to operate as associates that select and recommend items from the catalog and refer customers to the Web site system in exchange for compensation; (Claim 1)**

**determining and recording within a computer memory compensation for the associate for the sale. (Claim 1)**

**2. The method of claim 1, wherein determining and recording within a computer memory compensation for the associate comprises calculating a commission which is based at least in part on a selling price of an item purchased by the customer.**

transmitting to a user a business agreement which specifies legal terms for operating as an associate that refers customers to the Web site system in exchange for compensation; (Claim 10)

in response to a referral of a customer which results in a purchase of one or more items from the Web site system, determining compensation for the user for the referral. (Claim 10)

12. The method of claim 10, further comprising electronically paying the associate a monetary amount that represents the compensation.

providing a system for allowing associates to operate associate Web sites that display selected items of the catalog and refer customers to the Web site system in exchange for compensation; (Claim 14)

in response to the sale, determining, for each of the associate Web sites from which the items were selected, compensation for a corresponding associate (Claim 14)

determining compensation for the associates for the referrals of customers that result in purchases of items from the catalog. (Claim 17)

receiving compensation for at least one referral of a user to the merchant Web site that results in a sale, the referral resulting from selection of the link. (Claim 23)

completing and electronically submitting an online application to apply to operate as a referral source that refers customers to the merchant Web site system in exchange for compensation for referrals that produce sales; (Claim 29)

receiving compensation for at least one customer referral to the merchant Web site system that results in a sale of one or more items from the catalog, the customer referral resulting from selection by a customer of the link. (Claim 29)

a compensation system which determines and maintains records of compensation for the respective associates for the customer referrals that result in purchases of items from a catalog of the Web site. (Claim 36)

40. The system of claim 36, wherein the compensation system calculates associate compensation based on selling prices of the items purchased by referred customers.

Because the associate enrollment and referral tracking/credit functions are automated in whole or in part, these benefits can be realized with minimal supervision by the merchant. In addition, because the compensation provided to the associates is performance-based (e.g., based on the number of referrals that result in actual sales), the merchant need not be concerned with the existence of large numbers of associates that provide relatively small numbers of referrals. (end of Summary section)

The associate's Web site 100 is the site of an entity that has registered with the merchant, via the online registration process, to market a subset of the merchant's goods in return for compensation (preferably a performance-based commission). (Col. 6, lines 31-35).

Although the implementation described herein uses monetary commissions to compensate the associates for referrals, other forms of compensation can be used. For example, an associate (and/or the associate's customers) could be given a discount on products or services sold by the merchant. (Col. 7, lines 46-51)

Not once does Bezos teach or allude to a plurality of compensation plans as claimed, or to select “which of the plurality of different compensation plans to expose to the potential affiliate” whether “based upon the defined profile of the potential affiliate” as claimed or based on any other reason. Moreover, Bezos also does not teach or suggest:

**accepting a selection by the potential affiliate of at least one of the exposed compensation plans, the potential affiliate then becoming an affiliate, the accepting step being separate and distinct from the application receiving step, and**

To call Bezos’ “catalog of different products that can be marketed by an affiliate” (in the Office’s own words on page 3 of the Office Action) a plurality of compensation plans ignores the ordinary and customary meaning of the term “compensation,” for the purposes of making a §102 rejection.

As the Office is aware:

**Words of a claim are generally given their ordinary and customary meaning, which is the meaning a term would have to a person of ordinary skill in the art after reviewing the intrinsic record at the time of the invention. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005) (en banc).**

In this case, Bezos’ catalog of different products is not a compensation plan or a plurality of compensation plans, but ... a catalog or listing of different products. It is respectfully submitted that the Office is not free to change the ordinary and customary meaning of “catalog of different products,” to force that phrase to correspond to the claimed “compensation plans,” when the phrase “catalog of different products” is neither ambiguous nor open to interpretation. This is all the more so as Bezos himself uses the term “compensation” in his patent and uses it in its ordinary and customary meaning of “payment.” Indeed, catalogs are not payments or payment plans and neither are products.

More fundamentally, however, Bezos does not teach or suggest a plurality of compensation plans, does not teach or suggest evaluating a received application and defining a profile of the potential affiliate based upon the sales and marketing information in the received application and, based upon the defined profile, selecting which of the plurality of different compensation plans to expose to the potential affiliate the selected ones of the plurality of compensation plans being fewer in number than the defined plurality of different compensation plans, as claimed herein. Bezos also does not teach or suggest exposing only the selected ones of the plurality of compensation plans to the potential affiliate, the exposed compensation plans being tailored to at least one of the potential affiliate and a product or service offered by the merchant, as determined based upon the defined profile and the evaluation of the sales and marketing information in the received application, as also claimed. Nor does Bezos ever teach that the enrolling associate is able to select from among a plurality of compensation plans exposed to him or her.

Instead, Bezos teaches to provide a web page from which the enrolling associate can fill out a detailed online application form (Col. 10, lines 1-9). Thereafter, once the online application form is complete, it is sent to the merchant Web server for processing (Col. 10, lines 18-21), whereupon a unique store ID is generated (Col. 10, lines 40-41). Next, an email is sent to the now-approved associate detailing the manner in which referral links are to be constructed at the associate's Web site. Product IDs to build these referral links may be obtained by the associate by browsing the merchant's Web site (Col 10, lines 50-62). An optional commission ID may also be generated (Col. 12, line 62). Bezos details the sequence of events that takes place when a customer clicks on a referral link (Col. 12, beginning at line 52).

Beginning at Col. 13, line 1, Bezos details the manner in which his associates get paid; i.e., are compensated for driving traffic to the Amazon.com site:

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“mystore,” and the commission ID of “A.” In one implementation, the software **144** uses the commission ID to calculate an appropriate commission (e.g. 10% of merchant’s sales price) to apply to the associate’s account. As described below, if the customer subsequently adds the 5 selected product to the shopping cart, the extracted information is recorded within a shopping cart data structure that corresponds to the customer.

As noted in the excerpted paragraph above, Bezos teaches to use the commission ID to “calculate an appropriate commission (e.g. 10% of the merchant’s sales price) to apply to the associate’s account.”

Never does Bezos teach or suggest a plurality of compensation plans, nor does Bezos teach or suggest selecting which of the plurality of different compensation plans to expose (show, allow to view) to the potential affiliate, as claimed. Bezos also does not teach or suggest exposing only the selected ones of the plurality of compensation plans to the potential affiliate, the exposed compensation plans being tailored to at least one of the potential affiliate and a product or service offered by the merchant, as determined based upon the defined profile and the evaluation of the sales and marketing information in the received application, as also claimed in independent claim 1.

Also wholly untaught in Bezos is any teaching of the merchant

**accepting a selection by the potential affiliate of at least one of the exposed compensation plans, the potential affiliate then becoming an affiliate, the accepting step being separate and distinct from the application receiving step, and**



Indeed, in Bezos, the enrolling associate is not disclosed to have the ability to select from among the exposed compensation plans. This shortcoming alone is believed to be fatal to the Office's anticipatory rejections.

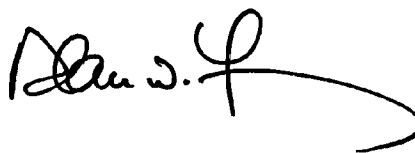
It is respectfully submitted that, as the applied reference does not teach these claimed features and steps, the anticipation rejection over Bezos is believed to be untenable and should be reconsidered and withdrawn.

Independent claims 29 and 47 include similar recitations and are not believed to be anticipated by Bezos for the reasons set forth above.

In view of the foregoing, reconsideration and withdrawal of the 35 U.S.C. §102(b) rejections applied to the claims is, therefore, respectfully requested.

Applicant believes that this application is now in condition for allowance. If any unresolved issues remain, please contact the undersigned attorney of record at the telephone number indicated below and whatever is necessary to resolve such issues will be done at once.

Respectfully submitted,



Date: August 8, 2008

By: \_\_\_\_\_

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